

TENTATIVE RULINGS for CIVIL LAW and MOTION
September 21, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: Aaron v. Hovnanian Forecast Homes
Case No. CV CV 08-2421

Hearing Date: September 21, 2009 Department Fifteen 9:00 a.m.

Assurance Company of America and Maryland Casualty Company's unopposed motion to intervene as a matter of right under Code of Civil Procedure section 387, subdivision (b) is **GRANTED**. (*Reliance Ins. Co. v. Superior Court of Santa Clara County* (2000) 84 Cal.App.4th 383.) Assurance Company of America and Maryland Casualty Company shall file its complaint in intervention by September 28, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Barr v. City of Woodland, et al.
Case No. CV CV 09-59

Hearing Date: September 21, 2009 Department Fifteen 9:00 a.m.

The Court deems Defendants' demurrer to be a motion to dismiss. The matter is **DISMISSED WITHOUT PREJUDICE**. (Gov. Code, § 945.3; *Heck v. Humphrey* (1994) 512 U.S. 477.) Currently, there is a criminal case pending against Plaintiffs, Yolo County Superior Court case number CR F 07-2772, that arises out the same facts and events that form the basis of the complaint. Plaintiffs may not bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon the conduct of the peace officer relating to the offence for which the accused is charged. (Gov. Code, § 945.3.)

Plaintiffs' Motion For Judgment and Motion To Grandfather "City & County of Trees Patient Care Center" Ordinance No. 1400 are **MOOT**.

Defendants' Motion to Quash Plaintiffs' Subpoenas and Motion to Strike Plaintiffs' Motion for Judgment and "Grandfather Clause" are **MOOT**.

Defendant request for judicial notice that the Court take judicial notice of the criminal prosecution that was instituted against plaintiffs in Yolo Superior Court arising out of the same facts which are the subject of this case is **GRANTED**. (Evid. Code, § 452, subd. (d).)

If no hearing is requested, this tentative ruling is effective immediately. Defendants shall prepare the order pursuant to California Rules of Court, rule 3.1312, and serve it on plaintiffs.

TENTATIVE RULING

Case: **El-Badry v. Morris**
Case No. CV CV 09-782

Hearing Date: **September 21, 2009** **Department Fifteen** **9:00 a.m.**

Defendants' motion to compel further responses to the first set of special and form interrogatories, the first set of requests for admissions and the first set of requests for production of documents is **MOOT**. (Code Civ. Proc., §§ 2023.010 et seq., 2030.300, 2031.310 & 2033.290.) Plaintiff served further responses to the discovery requests prior to the hearing on this motion. Accordingly, Defendants' request that the Court order Plaintiff to serve further verified responses to Defendants' discovery requests is now moot.

Defendants' request for sanctions is **GRANTED**. (Code Civ. Proc., §§ 2023.010 et seq.) Plaintiff did not serve further responses to Defendants' discovery requests until after the motion to compel was filed. Plaintiff originally served only objections to the discovery requests. The Court finds that Plaintiff and his counsel failed to make a good faith effort to participate in discovery and they failed to confer with Defendants concerning Plaintiff's responses to Defendants' discovery requests prior to Defendants' filing of this motion. (Code Civ. Proc. § 2023.020.) Plaintiff shall pay sanctions in the amount of \$1,540.00 to Defendants by October 22, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: **The Regents of The University of California v. Howard S. Wright**
Construction Company
Case No. CV CV 07-1982

Hearing Date: **September 21, 2009** **Department Fifteen** **9:00 a.m.**

The motion to vacate the judgment entered effective May 7, 2009, **GRANTED**. (Code Civ. Proc., §§ 473, subd. (d) and 998, subd. (b).) The judgment that was entered does not accurately reflect the terms and conditions of the accepted Code of Civil Procedure section 998 offer. Additionally, the offer was conditioned on the performance of two acts by the plaintiff, both of which had not been performed as of May 7, 2009 or August 11, 2009. The judgment entered effective May 7, 2009, is **VACATED nunc pro tunc**.

The dismissal with prejudice as to Howard S. Wright Construction Company and Travelers Casualty and Surety Company of America effective May 7, 2009, is also **VACATED** *nunc pro tunc*. Plaintiff did not file the mandatory Judicial Council form requesting a dismissal with prejudice.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Soong v. Chang
Case No. CV CV 07-914

Hearing Date: September 21, 2008 Department Fifteen 9:00 a.m.

Counsel are directed to appear. No request for hearing is required.

Plaintiffs Edward Soong and Caroline Soong's motion for relief from the waiver of their objections to defendants Ching Yin Chang and Lucy Zoyun Chang's Request for Production of Documents, Sets No. Two to the plaintiffs is **GRANTED**. (Code Civ. Proc., § 2031.300.)

Defendants shall file a motion or motions to compel further responses to their Request for Production of Documents, Sets No. Two to the plaintiffs, if any, by no later than October 23, 2009.

TENTATIVE RULING

Case: Yepez v. Sangha
Case No. CV PM 08-1956

Hearing Date: September 21, 2009 Department Fifteen 9:00 a.m.

The Court considered the late-filed opposition and reply briefs. Plaintiff's counsel is reminded that opposition briefs must be filed nine court days before the hearing. (Code Civ. Proc., § 1005, subd. (b).) The Court will not consider late-filed papers by either party in the future.

The motion for leave to file the cross-complaint attached as Exhibit A to the notice of motion filed on July 13, 2009, is **GRANTED**. (Code Civ. Proc., §§ 428.10, subd. (b) and 428.50, subd. (c).) Defendant shall file the cross-complaint by no later than September 25, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.